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15 Attorneys for Plaintiff

16 UNITED STATES DISTRICT COURT  
17 FOR THE  
18 NORTHERN MARIANA ISLANDS

19 KENNETH COUTURE,

20 Plaintiff,

21 v.

22 AMERICAN OVERSEAS MARINE  
23 CORPORATION and GENERAL  
24 DYNAMICS CORPORATION,

25 Defendants.

CIVIL ACTION NO. CV05-0024

DECLARATION OF  
WILLIAM M. FITZGERALD

Date: March 15, 2007

Time: 10:00 a.m.

Judge: Alex R. Munson

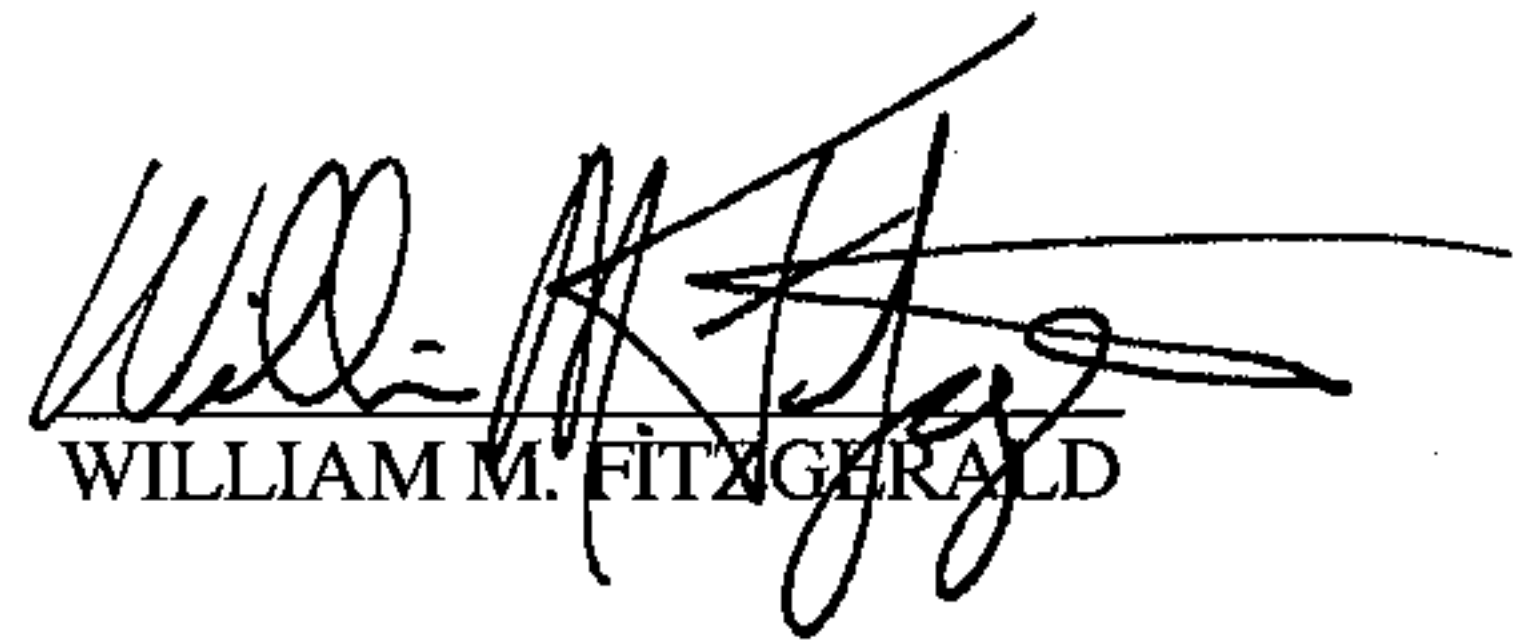
26 I, WILLIAM M. FITZGERALD, hereby declare and state the following:

- 27 1. I am counsel for plaintiff in the above-referenced case.
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1           2.       Attached to this Declaration is Exhibit "A", a true and correct copy of page 117 of  
2 the Time Charter for the M/V Lummus, which I copied from Exhibit "C" to Defendants' Motion for  
3 Summary Judgment, for the court's and counsel's convenience.

4           I declare under penalty of perjury under the laws of the Commonwealth of the Northern  
5 Mariana Islands, that the foregoing is true and correct.

6           EXECUTED on this 1<sup>st</sup> day of March, 2007.

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10          WILLIAM M. FITZGERALD  
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that the Vessel be redelivered to the port designated by it, in which case it shall pay to the Contractor for the benefit of the Shipowner and the Beneficiary the amount for which the Contractor is liable in accordance with Section 11.2 of the Bareboat Charter (without regard to the proviso at the end of such Section 11.2).

(e) Upon expiration or earlier termination of this Charter with respect to any Container, such Container, unless lost, sold or purchased by the Charterer hereunder, shall be redelivered at a port near Quincy, Massachusetts or such other port in the United States as may be mutually agreed. The Charterer shall give the Contractor not less than 90 days notice (confirmed by telegram or letter, if oral) of the expected date and range of such redelivery and 30 days notice (confirmed by a telegram or letter) of the actual port or ports of such redelivery. If such redelivery is to be made at the same time as the redelivery of the Vessel, such redelivery shall be made at the place and time determined in accordance with Article 34(a). Any costs incurred by the Contractor in removing Containers or other containers from the Vessel and redelivering Containers to the Container Owner shall be reimbursed by the Charterer.

#### ARTICLE 35. CHARTER NOT A DEMISE

Nothing herein contained shall be construed as creating a demise of the Vessel to the Charterer; the Contractor shall at all times retain complete and exclusive possession and control of the Vessel and its navigation.

#### ARTICLE 36. INSPECTION

(a) The Vessel shall be subject to inspections, at the time and expense of the Charterer, at reasonable intervals and at such times as deficiencies exist to determine the continuing suitability of the Vessel for the required service as well as to determine whether the material condition of the Vessel will prevent effective operation during the Basic Term and Renewal Periods of this Charter. Such inspections shall include but not be limited to the following:

- (1) Condition of cargo handling equipment
- (2) Conditions and tightness of hull and deck plating
- (3) Communication and navigation equipment

